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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,630	07/26/2004	Stephen Titus		4751
21005	7590	11/06/2008		EXAMINER
HAMILTON, BROOK, SMITH & REYNOLDS, P.C. 530 VIRGINIA ROAD P.O. BOX 9133 CONCORD, MA 01742-9133			GRAHAM, MARK S	
			ART UNIT	PAPER NUMBER
			3711	
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			11/06/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/710,630	TITUS, STEPHEN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Mark S. Graham	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 7/21/08.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 20-45 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 20-45 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 20, 21, 25, 33, 34, 38 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Chang '393 (Chang).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27-32 and 40-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang. Chang does not disclose the particularly claimed dimensions. However, he states in paragraph 11 that the dimensions may be altered according to circumstances. It would have been obvious to one of ordinary skill in the art to have altered Chang's dimensions depending on the strength and flexibility desired in the cue stick.

Claims 22-24 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang in view of Yu '424 (Yu). Chang discloses the claimed device with the exception of the foam. However, as disclosed by Yu it is known in the art to

use such foam for vibration dampening purposes. It would have been obvious to one of ordinary skill in the art to have used such in Chang's cue for the same reason.

Claims 26 and 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chang in view of McCarty '051 (McCarty). Chang only discusses the front half of his cue. However, as disclosed by McCarty the rear half of the cue may also be provided with a continuously increasing wall thickness as claimed. It would have been obvious to one of ordinary skill in the art to have so formed the rear half of Chang's cue as well to obtain the advantages sought by McCarthy.

In response to applicant's first argument the claims do not exclude a shaft made of wood and fibers disposed in a binder as Chang's is constructed. Therefore, Chang's tapered composite and wood shaft does indeed anticipate the claims rejected above under 35 U.S.C. 102(b).

Claims 27-29, 33, 38, and 40-42 are rejected for the reasons explained above. No additional substantive argument for patentability has been advanced.

With regard to the rejections based on Chang in view of McCarty, it is again noted that Chang teaches a tapered shaft made of wood and fibers disposed in a binder and therefore meets the limitations of the physical construction of the claimed tapered shaft. McCarty clearly teaches a continuously increasing back half of a shaft as is claimed. As noted previously Chang clearly teaches a continuously increasing front half of a shaft. Given that both constructions are known in the art it would have been obvious to one of ordinary skill in the art to have used both to obtain the advantages sought in the prior art references with predictable expectation of success.

Applicant's arguments filed 7/21/08 have been fully considered but they are not persuasive.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Mark S. Graham at telephone number 571-272-4410.

MSG  
11/5/08

/Mark S. Graham/  
Primary Examiner, Art Unit 3711